

**MIAMI-DADE COUNTY DEPARTMENT OF PLANNING AND ZONING  
RECOMMENDATION TO THE BOARD OF COUNTY COMMISSIONERS**

**APPLICANT:** Rene Miguel Valdez

**PH:** Z05-364 (06-10-CZ10-2)

**SECTION:** 15-54-40

**DATE:** June 23, 2011

**COMMISSION DISTRICT:** 10

**ITEM NO.:** A

**A. INTRODUCTION**

o **SUMMARY OF REQUESTS:**

The applicant is requesting a district boundary change on the subject property from RU-1, Single-Family Residential District, to RU-5A, Semi-Professional Office District, or in the alternative, a use variance to permit RU-5A office uses in the RU-1 zoning district.

o **REQUESTS:**

THE BOARD OF COUNTY COMMISSIONERS WILL BE CONDUCTING PROCEEDINGS ON REMAND FROM CIRCUIT COURT WITH DIRECTIONS TO APPROVE THE FOLLOWING:

(1) RU-1 to RU-5A

OR IN THE ALTERNATIVE:

(2) Use Variance to permit RU-5A uses in the RU-1 zone.

Plans are on file and may be examined in the Department of Planning and Zoning entitled "Proposed RU-5A Zoning for Rene Miguel Valdes," as prepared by G. J. R. Architects, consisting of 2 sheets, dated stamped received 11/18/05. Plans may be modified at public hearing.

o **LOCATION:** 2425 SW 82 Avenue, Miami-Dade County, Florida.

o **SIZE:** 0.307 Acres

**B. ZONING HEARINGS HISTORY:** In October 2006, the Community Zoning Appeals Board 10 (CZAB 10) denied with prejudice the applicant's requests for a zone change from RU-1 to RU-5A or in the alternative a use variance to permit RU-5A uses in the RU-1 zone, pursuant to Resolution No. CZAB10-62-06. The applicant appealed CZAB 10's decision to the BCC which denied said appeal with prejudice, pursuant to Resolution No. Z-6-07. This application has been remanded to the Board of County Commissioners (BCC) by the Circuit Court of the Eleventh Judicial Circuit with instructions to act in accordance with Court's Opinion which rejected the Board's decision to deny the application. The Circuit Court quashed the BCC's decision to sustain the Community Zoning Appeals Board 10 decision to deny this application.

**C. COMPREHENSIVE DEVELOPMENT MASTER PLAN (CDMP) OBJECTIVES, POLICIES AND INTERPRETATIVE TEXT:**

1. *The Adopted 2015 and 2025 Land Use Plan designates the subject property as being within the Urban Development Boundary for **Low Density Residential** use. The residential densities allowed in this category shall range from a minimum of 2.5 to a maximum of 6.0 dwelling units per gross acre. Residential densities of blocks abutting activity nodes as defined in the Guidelines for Urban Form, or of blocks abutting section line roads between nodes, shall be allowed a maximum residential density of 10.0 dwelling units per gross acre. To promote infill development, residential development exceeding the maximum density of 6.0 dwelling units per acre is permitted for substandard lots that were conveyed or platted prior to August 2nd, 1938. This density category is generally characterized by single family housing, e.g., single family detached, cluster, and townhouses. It could include low-rise apartments with extensive surrounding open space or a mixture of housing types provided that the maximum gross density is not exceeded.*
2. *Existing lawful residential and non-residential uses and zoning are not specifically depicted on the LUP map. They are however reflected in the average Plan density depicted. All such lawful uses and zoning are deemed to be consistent with this Plan as provided in the section of this chapter titled "Concepts and Limitations of the Land Use Plan Map." The limitations referenced in this paragraph pertain to existing zoning and uses. All approval of new zoning must be consistent with the provisions of the specific category in which the subject parcel exists, including the provisions for density averaging and definition of gross density.*
3. ***Office uses** smaller than five acres in size may be approved in areas designated as Residential Communities where other office, business or industrial use(s) which are not inconsistent with this plan already lawfully exist on the same block face. However, where such an office, business, or industrial use exists only on a corner lot of a subject block face or block end, approval of office use elsewhere on the block is limited to the one block face or block end which is the more heavily trafficked side of the referenced corner lot. Office uses may be approved on such sites only if consistent with the objectives and policies of the CDMP and the use or zoning district would not have an unfavorable effect on the surrounding area: by causing an undue burden on transportation facilities including roadways and mass transit or other utilities and services including water, sewer, drainage, fire, rescue, police and schools; by providing inadequate off-street parking, service or loading areas; by maintaining operating hours, outdoor lighting or signage out of character with the neighborhood; by creating traffic, noise, odor, dust or glare out of character with the neighborhood; by posing a threat to the natural environment including air, water and living resources; or where the character of the buildings, including height, bulk, scale, floor area ratio or design would be out of scale with the character of the neighboring uses or would detrimentally impact the surrounding area. In applying this provision, the maximum limits of an eligible residentially designated block face along which office uses may be extended shall not extend beyond the first intersecting public or private street, whether existing, platted or projected to be necessary to provide access to other property, or beyond the first railroad right-of-way, utility transmission easement or right-of-way*

*exceeding 60 feet in width, canal, lake, public school, church, park, golf course or major recreational facility.*

*In addition, office uses may be approved along the frontage of major roadways in residential community areas where residences have become less desirable due to inadequate setbacks from roadway traffic and noise, or due to a mixture of nonresidential uses or activities in the vicinity in accordance with the limitations set forth in this paragraph. These office uses may occur in combination with or independent of residential use. Such limited office uses may be approved on such sites in residential community areas only where: a) the residential lot fronts directly on a Major Roadway as designated on the Land Use Plan map (Frontage roads are not eligible for consideration); b) the lot or site size does not exceed one acre; and c) the residential area is not zoned, developed or designated on the Land Use Plan map for Estate Density Residential, nor does subject frontage face such an Estate Density area. Office use approvals, pursuant to this paragraph may only authorize: a) conversion of an existing residence into an office; b) addition of an office use to an existing residence; or, c) the construction of a new office building on lots which were finally platted prior to March 25, 1991 in a size one acre or smaller. Additionally, such office uses may be approved only if the scale and character of the prospective office use are compatible with the surrounding residential neighborhood and if the site has sufficient dimensions to permit adequate on-site parking and buffering of adjacent residences from the office. Other factors that will be considered in determining compatibility include, but are not limited to traffic, noise, lighting, shadows, access, signage, landscaping, and hours of operation. Signage shall be restricted both in size, style, and location to preclude a commercial appearance. Landscaping and buffering of adjacent residences and rear properties will be required. Emphasis shall be placed on retention of the general architectural style of the area, where the area is sound and attractive. Development Orders authorizing the conversion of existing homes into offices, the addition of offices to existing residences or the construction of new buildings encompassing office uses pursuant to this paragraph may be approved only where compatible and where the intensity and character of the new building including gross floor area, lot coverage and height, will be consistent with the homes which exist or which could be built on the immediately adjacent parcels.*

4. **Policy LU-4D.** *Uses which are supportive but potentially incompatible shall be permitted on sites within functional neighborhoods, communities or districts only where proper design solutions can and will be used to integrate the compatible and complementary elements and buffer any potentially incompatible elements.*

**D. NEIGHBORHOOD CHARACTERISTICS:**

ZONING

LAND USE PLAN DESIGNATION

Subject Property:

RU-1; Single-family residence

Low Density Residential, 2.5 to 6 du

**Surrounding Properties:**

<b><u>NORTH:</u></b> RU-2; Travel agency and Insurance company	Low Density Residential, 2.5 to 6 du
<b><u>SOUTH:</u></b> RU-1; Group home	Low Density Residential, 2.5 to 6 du
<b><u>EAST:</u></b> RU-1; Single-family residence	Low Density Residential, 2.5 to 6 du
<b><u>WEST:</u></b> RU-1; Office and Single-family residence	Low Density Residential, 2.5 to 6 du

**F. PERTINENT ZONING REQUIREMENTS/STANDARDS:**

*In evaluating an application for a **district boundary change**, **Section 33-311** provides that the Board take into consideration, among other factors, the extent to which:*

- (1) The development permitted by the application, if granted, conforms to the Comprehensive Development Master Plan for Miami-Dade County, Florida; is consistent with applicable area or neighborhood studies or plans, and would serve a public benefit warranting the granting of the application at the time it is considered;*
- (2) The development permitted by the application, if granted, will have a favorable or unfavorable impact on the environmental and natural resources of Miami-Dade County, including consideration of the means and estimated cost necessary to minimize the adverse impacts; the extent to which alternatives to alleviate adverse impacts may have a substantial impact on the natural and human environment; and whether any irreversible or irretrievable commitment of natural resources will occur as a result of the proposed development;*
- (3) The development permitted by the application, if granted, will have a favorable or unfavorable impact on the economy of Miami-Dade County, Florida;*
- (4) The development permitted by the application, if granted, will efficiently use or unduly burden water, sewer, solid waste disposal, recreation, education or other necessary public facilities which have been constructed or planned and budgeted for construction;*
- (5) The development permitted by the application, if granted, will efficiently use or unduly burden or affect public transportation facilities, including mass transit, roads, streets and highways which have been constructed or planned and budgeted for construction, and if the development is or will be accessible by public or private roads, streets or highways.*

**Section 33-311(A)(4)(a) Use Variance.** *The Board shall hear and grant applications for **use variances** from the terms of the zoning regulations as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions thereof will result in unnecessary hardship, and so the spirit of the regulations shall be observed and substantial justice done; provided, that the use variance will be in harmony with the general purpose and intent of the regulation, and that the same is the minimum use variance that will permit the reasonable use of the premises. A "use variance" is a*

*variance which permits a use of land other than which is prescribed by the zoning regulations and shall include a change in permitted density.*

**G. NEIGHBORHOOD SERVICES PROVIDER COMMENTS:**

DERM	<b>No objection*</b>
Public Works	<b>No objection*</b>
Parks	<b>No comment</b>
MDT	<b>No comment</b>
Fire Rescue	<b>No objection</b>
Police	<b>No objection</b>
Schools	<b>No comment</b>

\*Subject to the conditions indicated in their memoranda.

**H. PLANNING AND ZONING ANALYSIS:**

This application was deferred from the April 28, 2011 meeting at the request of the applicant. This application has been remanded to the Board of County Commissioners (BCC) by the Circuit Court of the Eleventh Judicial Circuit with instructions to act in accordance with said court's opinion which rejected the Board's decision to deny the application. The applicant, Rene Miguel Valdes, appealed the decision of the BCC by seeking the issuance of a writ of certiorari from the Appellate Division of the 11<sup>th</sup> Judicial Circuit Court to quash the BCC's denial of the application (Resolution No. Z-6-07).

On October 17, 2006, pursuant to Resolution CZAB10-62-06, the Community Zoning Appeals Board – 10 (CZAB-10) denied with prejudice this application by a vote of 5 to 0. On November 6, 2006, the applicant appealed the CZAB-10's decision to this Board which denied the appeal by a vote of 10-0, pursuant to Resolution No. Z-6-07. Upon review, the appellate court found that the Board's decision to deny this application is not fairly debatable, amounts to reverse spot zoning and does not comport with the essential requirements of the law, thereby resulting in a miscarriage of justice (Circuit Court Case No. 07-304-AP). The Circuit Court granted certiorari and quashed the BCC's decision to sustain the Community Zoning Appeals Board 10 decision to deny this application. The County appealed the Circuit Court decision to the 3<sup>rd</sup> District Court of Appeal. The 3<sup>rd</sup> District Court of Appeal affirmed the Circuit Court's decision, though there was a vigorous dissent by a member of the court. The Florida Supreme Court denied further review of this case.

The applicant indicated on the appeal application to this Board that the subject property fronts on SW 82 Avenue, a half section-line road, and is located one lot to the south of the SW 24 Street (Coral Way). Additionally, the applicant notes that the subject property is impacted by substantial traffic along SW 82 Avenue, and indicates that the subject property is also impacted by the neighboring office uses found to the north and west, and by the adult congregate living facility to the south. The applicant maintains that the property is no longer appropriate for residential use.

The subject property is located at 2425 SW 82 Avenue, approximately 140' south of SW 24 Street (Coral Way), in an area characterized by single-family homes, a group home, and office/residential conversions. The 0.307-acre subject site is currently improved with a one-story single-family residence. The applicant seeks to change the zoning on the

subject property from RU-1, Single-Family Residential District, to RU-5A, Semi-Professional Office District, or in the alternative, a use variance to permit RU-5A uses in the RU-1 zoning district.

RU-5A uses include, but are not limited to, office buildings for accountants, architects, attorneys, dentists, medical doctors, notary publics, real estate, and travel agencies as well as banks without drive-through teller facilities. However, the applicant indicated in their Letter of Intent that the purpose of the zone change is to permit an architect's office. Staff notes that the applicant has proffered a covenant specifically restricting the office use on the site to that of an architect's office. Plans submitted by the applicant demonstrate that the subject site complies with all RU-5A zoning requirements for setbacks and lot coverage, including the compulsory parking requirements needed for office use.

Approval of either request would allow the applicant to provide semi-professional office services for the community. The subject site is designated for **Low Density Residential** use on the Land Use Plan (LUP) map of the Comprehensive Development Master Plan (CDMP). The CDMP provides that office uses may be approved along the frontage of major roadways in residential community areas where residences have become less desirable due to inadequate setbacks from roadway traffic and noise, or due to a mixture of nonresidential uses or activities in the vicinity in accordance with the limitations set forth in the CDMP. These office uses may occur in combination with or independent of residential use. Such limited office uses may be approved on such sites in residential community areas only where: a) the residential lot fronts directly on a Major Roadway as designated on the Land Use Plan map (Frontage roads are not eligible for consideration); b) the lot or site size does not exceed one acre; and c) the residential area is not zoned, developed or designated on the Land Use Plan map for Estate Density Residential, nor does the subject frontage face such an Estate Density area.

The subject property meets some of the aforementioned criteria of the Master Plan for approval of office uses within residential designations in that the subject property is less than one acre in size and is not zoned, developed or designated on the Land Use Plan map for Estate Density Residential. However, although the subject property is located on a half-section line roadway (SW 82 Avenue) it does not front on a "major roadway" as designated on the Land Use Plan map.

Notwithstanding the foregoing, the Master Plan also indicates that where other office, business or industrial uses exist on the same block face, approval of similar requests may be granted. However, where such an office, business or industrial use exists on a corner lot of a subject block face or block end, approval of office uses elsewhere on the block is limited to the one block face or block end which is the more heavily trafficked side of the referenced corner lot. One of the two neighboring parcels to the north, situated on the corner of SW 82 Avenue and Coral Way, was granted a use variance to permit all RU-5A uses in an RU-1 zone, pursuant to Resolution No. #Z-192-90; but cannot be considered as part of the same block face where the subject property lies, since it fronts Coral Way, the more heavily trafficked side.

Moreover, Resolution No. 4-ZAB-133-71 also approved a use variance on the other neighboring parcel to the north of the subject property also facing Coral Way and the property to the west of the subject site was granted approval of a use variance to permit a janitorial office in the RU-1 zone as would be permitted in the RU-5A zone, pursuant to Resolution No. Z-112-91. It should be noted that the parcel to the south of the subject

property on the same block face has an existing group home which staff notes is a permitted RU-1 use, is considered a single-family residential use and is limited to no more than 6 people residing on the premises.

Notwithstanding the foregoing, the appellate court determined that operating a group home for the elderly is commercial in nature and concluded that the subject site is "...a veritable island or, at the very least, a peninsula in a sea of commercially zoned property..." Based on the findings of the Court, staff opines that the subject site meets the CDMP criteria for the approval of an office use in a residential community in that a commercial use (group home) lawfully exists on the same blockface as the subject site. In addition, since the subject site abuts lawfully existing office uses to the north and west, staff opines that the introduction of an office use on this site is **compatible** with the other office uses located to the north and west of the site and with the existing group home located to the south of the site. Policy LU-4D of the CDMP states that uses which are supportive but potentially incompatible shall be permitted on sites within functional neighborhoods, communities or districts only where proper design solutions can and will be used to integrate the compatible and complementary elements and buffer any potentially incompatible elements. Staff notes that the submitted plans illustrate a 6' high Cherry Hedge along the north, east and south property lines with palms and Live Oak trees which staff opines will effectively buffer the office use from the surrounding properties. As such the staff opines that the proposed architect's office as illustrated on the submitted plans is consistent with Policy LU-4D of the CDMP and with the interpretative text of the CDMP for the approval of office uses in residential communities. Although, staff notes that the requested rezoning to RU-5A would be **compatible** with the surrounding office uses and **consistent** with the CDMP, **staff is supportive of the alternative use variance request subject to the Board's acceptance of the proffered covenant which limits the office use on the site to an architect's office, in that none of the properties that abut the subject site are zoned RU-5A.**

When considering district boundary changes, the Board shall hear and grant or deny applications by taking into consideration if the proposed development conforms to the Comprehensive Development Master Plan for Miami-Dade County. As previously mentioned, the requested RU-5A zoning would be **consistent** with the interpretative text of the CDMP and **compatible** with the neighboring office uses to the north and west of the subject property and with the existing group home to the south of the subject site.

Staff notes that the proposed architect's office will not have an unfavorable impact on the water, sewer, solid waste disposal, or other public services and will not have an unfavorable impact on the environment as indicated by the memorandum submitted by DERM. Additionally when considering zone changes, the Board shall consider if the development will have a favorable or unfavorable impact on the economy of Miami-Dade County. The approval of this application will not have an unfavorable impact on the economy nor on the environmental and natural resources of Miami-Dade County. Furthermore, the proposed development does not unduly burden or affect public transportation facilities as indicated in the Public Works Department's memorandum submitted for this application. The applicant seeks to change the zoning on the subject property from RU-1, Single-Family Residential District, to RU-5A, Semi-Professional Office District, to allow the applicant to provide semi-professional office services for the community. As previously mentioned, the applicant has proffered a covenant specifically restricting the office use on the site to that of an architect's office.



Staff's research reveals that most of the single-family residential lots fronting on SW 24 Street, between SW 82 Place and SW 79 Court, have gradually converted to non-residential uses and offices. Specific research indicates that of the 15 lots that front on Coral Way between those four blocks, only three lots are still in residential use; numerous public hearings have approved use variances as early as 1963 and as recent as an RU-5A district boundary change approval in 2007. Most, if not all, of these land use conversions are due to the increase in traffic and noise associated with Coral Way, which over the years have negatively impacted the quality of life of residents with homes fronting said corridor. Additionally, the placement of office uses is better located where traffic activity is intense and the roadway is well traveled, as opposed to having residences front such a busy vehicular corridor. Notwithstanding the foregoing, staff opines that RU-5A zoning should be limited to those lots fronting on SW 24 Street (Coral Way) and notes that although the properties to the north and west of the subject site have been granted approval at public hearing to permit office uses, staff notes that said properties are zoned RU-2 and RU-1 respectively. Moreover, staff notes that none of the properties along SW 82 Avenue are zoned RU-5A and therefore staff opines that the introduction of RU-5A zoning on the subject site would create an "island" of RU-5A zoning midblock along SW 82 Avenue. Although, staff notes that the requested rezoning to RU-5A would be **compatible** with the surrounding office uses and **consistent** with the CDMP, staff is supportive of the alternative use variance request subject to the Board's acceptance of the proffered covenant which limits the office use on the site to an architect's office, in that none of the properties that abut the subject site are zoned RU-5A. **Therefore, staff recommends denial without prejudice of request #1.**

In the alternative to the district boundary change (request #1), the applicant is requesting a use variance to permit RU-5A uses in the RU-1 zone. A use variance, as stated in Section 33-311(A)(4)(a), is a variance which permits a use of land other than that which is prescribed by the zoning regulations. Section 33-311(A)(4)(a) also states that the Board shall hear and grant applications for use variances from the terms of the zoning regulations as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions thereof will result in unnecessary hardship, and so the spirit of the regulations shall be observed and substantial justice done; provided, that the use variance will be in harmony with the general purpose and intent of the regulations.

As previously mentioned the Circuit Court granted certiorari and quashed the BCC's decision to sustain the Community Zoning Appeals Board 10 decision to deny this application. Staff notes that use variances were approved on two parcels of land abutting the subject property to the north, pursuant to Resolution Nos. Z-192-90 and 4-ZAB-133-71. Furthermore, the appellate court determined that operating a group home for the elderly is commercial in nature and concluded that the subject site is "...a veritable island or, at the very least, a peninsula in a sea of commercially zoned property that substantially diminishes or renders its value to be virtually worthless as a residential property." Based on the aforementioned, staff concurs with the Court's finding and opines that the subject site is no longer conducive for use as a single-family residence. Therefore, staff is of the opinion that the approval of the requested use variance to permit semi-professional office uses in the RU-1 zone as would be permitted in the RU-5A zone on the subject property, subject to the Board's acceptance of the proffered covenant, will not be contrary to the public interest and will be in harmony with the general purpose and intent of the regulations which is to promote development that is compatible with the surrounding area. Staff's research as well as the opinion issued by the Circuit Court reveals that due to the conversion of the area to predominantly office usage, special conditions have transpired in



the surrounding area whereby a literal enforcement of the provisions of the RU-1 zoning regulations would result in **unnecessary hardship**. In staff's opinion, the spirit of the regulations shall be observed and substantial justice done by the approval of the semi-professional office use on this site. **Therefore, staff recommends approval with conditions of the requested use variance under Section 33-311(A)(4)(a), subject to the Board's acceptance of the proffered covenant.**


**I. RECOMMENDATION:**

**Denial without prejudice of request #1 and approval with conditions of request #2, subject to the Board's acceptance of the proffered covenant.**

**J. CONDITIONS:**

1. That a site plan be submitted to and meet with the approval of the Director of the Department of Planning and Zoning upon the submittal of an application for a building permit; said plan to include among other things but not be limited to, location of structure or structures, exits and entrances, drainage, walls, fences, landscaping, parking, etc.
2. That in the approval of the plan, the same be substantially in accordance with that submitted for the hearing entitled "Proposed RU-5A Zoning for Rene Miguel Valdes," as prepared by G. J. R. Architects, consisting of 2 sheets, dated stamped received 11/18/05, except as herein modified to show a 5' high wood fence in lieu of the chain link fence along the interior side (north and south) property lines and rear (east) property line.
3. That the applicant submit to the Department of Planning and Zoning for its review and approval a landscaping plan which indicates the type and size of plant material prior to the issuance of a building permit and to be installed prior to the issuance of a Certificate of Use.
4. That the use be established and maintained in accordance with the approved plan.
5. That the applicant comply with all applicable conditions and requirements of the Public Works Department.
6. That the applicant install a 5' high wood fence along the interior side (north and south) property lines and the rear (east) property line. Said fence shall be installed prior to final zoning inspection for the proposed addition.
7. That the use be restricted to an architect's office only, pursuant to the proffered covenant.

**DATE TYPED:** 02/03/11  
**DATE REVISED:** 02/04/11; 02/08/11; 02/25/11; 03/21/11; 04/29/11  
**DATE FINALIZED:** 04/29/11  
MCL:GR:NN:TA:NC

  
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Marc C. LaFerrier, AICP, Director  
Miami-Dade County Department of Planning and Zoning *Non*